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JULIO CESAR PALMAZ and AMALIA B. PALMAZ,
8 TRUSTEE OF THE AMALIA B. PALMAZ LIVING TRUST

9
10 BEFORE THE STATE WATER RESOURCES CONTROL BOARD
11

12 IN THE MATTER OF: THE PETITION OF:

SWRCB/OCC File

13 JULIO CESAR PALMAZ and AMALIA B.
14 PALMAZ, TRUSTEE OF THE AMALIA B.
PALMAZ LIVING TRUST FOR REVIEW OF
15 CLEANUP AND ABATEMENT ORDER
(No. R2-2007-0019)
16

**PETITION FOR REVIEW AND
REQUEST FOR HEARING**

(Cal. Water Code § 13320; Cal. Code
Regs. tit. 23, §§ 2050 & 2053)

17 **INTRODUCTION**

18 JULIO CESAR PALMAZ and AMALIA B. PALMAZ, TRUSTEE OF THE AMALIA B.
19 PALMAZ LIVING TRUST (collectively “Palmaz” or “Petitioners”) hereby appeal Cleanup and
20 Abatement Order No. R2-2007-0019 (“CAO”) of the Executive Officer of the San Francisco Bay
21 Regional Water Quality Control Board (“Regional Board”) requiring Palmaz to conduct cleanup
22 and abatement work. Palmaz further requests the State Water Resources Control Board (“State
23 Board”) to hold this Petition in abeyance for the maximum time period permitted under its
24 procedures and policies. This Petition for Review and Request for Hearing (collectively, the
25 “Petition”) is brought pursuant to the provisions of California Water Code section 13320 and
26 Title 23 of the California Code of Regulations sections 2050 and 2053.
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Dr. Julio & Amalia Palmaz
Palmaz Vineyards
4031 Hagen Road
Napa, California 94556
(707) 251-5980

This Petition appeals Cleanup and Abatement Order No. R2-2007-0019 for the Palmaz Vineyard and Winery development issued March 21, 2007 (“CAO”). A true and correct copy of the CAO is attached as **Exhibit A**.

The Regional Board's action was taken on March 21, 2007.

Palmaz sets forth the summary statement below, however, Palmaz requests that this Petition be held in abeyance and reserves the right the right to submit an additional Statement of Reasons should this Petition be activated.

- The CAO includes findings of fact that are not supported by substantial evidence in the record. Specifically, the CAO is based on a purported delineation of alleged wetlands that is unsubstantiated and contrary to the facts, so that the Regional Board is attempting to regulate activity beyond its jurisdiction.
- The Regional Board also appears to be deviating from the U.S. Army Corps of Engineer (“Corps”) definition of wetlands, in contradiction of its long-standing administrative practice.

- The CAO requires Palmaz to submit technical reports and perform investigations and corrective action under arbitrary and unreasonable timeframes and fails to bear a reasonable relationship to the beneficial needs, if any, for the reports.
- The issues identified in the CAO and required to be addressed in the reports have already been addressed by other public agencies and, thus, the CAO is barred by the principles of collateral estoppel and res judicata.
- There is no legal basis for including the Palmaz property in the Regional Board's Spills, Leaks, Investigations and Cleanup (SLIC) Cost Recovery Program.
- The CAO violates Palmaz's constitutional rights to due process and equal protection.

V. MANNER IN WHICH THE PETITIONERS ARE AGGRIEVED

Palmaz is an aggrieved person within the meaning of Water Code section 13320, because the CAO requires Palmaz to prepare and submit reports and undertake cleanup and abatement actions without consideration of their economic or operational feasibility. The CAO imposes duplicative and unnecessary requirements on Palmaz, and subjects Palmaz to the risk of penalties if the Regional Board believes Palmaz has not complied with the order.

VI. SPECIFIC ACTION REQUESTED BY THE PETITIONERS

Palmaz respectfully requests that the State Board rescind the CAO. Palmaz respectfully requests the State Board hold this Petition in abeyance for the maximum time period permitted under its procedures and policies, or until Palmaz requests action on this Petition, whichever is earlier.

Palmaz reserves the right to further request any and all actions authorized in California Water Code Section 13320. Palmaz is not requesting a stay at this time, but reserves the right to do so in the future.

1 **VII. STATEMENT OF POINTS AND AUTHORITIES IN SUPPORT OF**
2 **PETITION**

3 Below is a summary of the statement of the points and authorities in support of the
4 Petition. Palmaz requests that this Petition be held in abeyance and will submit a full statement of
5 points and authorities should this Petition be activated.

6 **A. Factual Background**

7 The CAO concerns certain activity at the Palmaz Vineyards, owned and operated by
8 Palmaz. In brief, in 2001, Napa County authorized the use of a wine cave at the adjacent winery,
9 under the condition that all the tailings from the project remain on the property. The County
10 reviewed the project under the provisions of the California Environmental Quality Act and
11 adopted a Mitigated Negative Declaration. No challenge to the Mitigated Negative Declaration
12 was filed. The flatlands surrounding the house and adjacent to the wine cave had already been
13 cultivated with vineyards. Consequently, it was necessary to locate other flat areas on the 600-
14 acre property to dispose of the spoils. Given the very hilly nature of the property, the options
15 were limited.

16 After careful consideration and investigation, the spoils from the wine cave were
17 originally deposited in two large mounds on certain areas of the property. These areas had
18 traditionally been used for extensive agricultural purposes in the past. As a result of this past
19 agricultural use there were existing rock walls in place that formed terraces and there was a
20 significant lack of native vegetation in theses areas, as well as an extensive pre-existing irrigation
21 and drainage system. Some of these areas were flat and did not need any alteration. On other
22 steeper sections the historic rock retaining walls were rebuilt and new walls were constructed to
23 create terraces. Palmaz solicited advice from engineers concerning the method of construction
24 and what features should be avoided. In particular, Palmaz was concerned about any features on
25 the property that may be considered wetlands, as well as Hagen Creek, which ran through the
26 property. After most of the construction of the terraced fields was completed in 2004, the County
27 inspected the property and wrote a letter confirming that there were no problems.
28

1 During the heavy rains in the winter of 2006, a debris slide on the property deposited a
2 great deal of mud, debris, and uprooted trees into Hagen Creek. The slide occurred on an
3 undisturbed hillside on the opposite side of Hagen Creek from the areas used for cave spoils. At
4 the time the slide occurred, Palmaz was out of the country. In their absence, Palmaz's employees
5 conducted certain cleanup work that raised concerns by the California Department of Fish and
6 Game ("DFG"). In response, Palmaz retained several qualified experts to inspect the site. The
7 consultants concluded that, with the exception of a few areas where there may have been minor
8 encroachments within the County setback from the stream, construction was of the highest order,
9 performed in a manner that was protective of the environment, and did not require permits from
10 any agency. During the heavy rains of 2002, none of the areas that were used for cave spoils
11 experienced any landslides or soil erosion.

12 DFG conducted an investigation of the property and concluded that some of the work
13 (both before and after the 2006 slide) affected Hagen Creek on the property in violation of certain
14 provisions of the California Fish and Game Code and referred the matter to the Napa County
15 District Attorney. This work consisted of repairing an existing spring box, replacing and
16 repairing existing bridges and cutting back vegetation from the stream bank.

17 On March 21, 2007, the Regional Board issued the CAO, alleging, among other items,
18 that Palmaz discharged waste to waters of the State (including two wetlands of 0.978 acres and
19 1.200 acres in area, respectively). CAO at 1. The CAO orders Palmaz to submit, by June 29,
20 2007,¹ the following, among other things: extensive technical reports, detailing the past and
21 present condition of the property and all constructions activities conducted on the site; and a
22 corrective action workplan, outlining actions to reconstruct, revegetate, restore and remediate the
23 wetlands and other waters of the State on the property, as well as a proposal to provide
24 compensatory habitat to mitigate the temporal impacts associated with the construction and
25 cleanup work. CAO at 5-7.

26
27 ¹ This deadline was originally stated in the CAO as May 1, 2007, but Regional Board
28 staff, by correspondence dated April 18, 2007, granted an extension.

1 **B. Argument**

2 **1. Standard and Scope of Review**

3 In reviewing a decision of the Regional Board, the State Board is not subject to the same
4 strict standards that govern court review of administrative actions. *See* Cal. Water Code § 13320;
5 *In the Matter of the Petition of Exxon Co., USA*, Order No. WQ 85-7 at 14 (Aug. 22, 1985).
6 Rather, under the California Water Code, the State Board must consider both the record before
7 the Regional Board and “any other relevant evidence” when reviewing the order. Cal. Water
8 Code § 13320(b). The State Board reviews the Regional Board’s decision under an “appropriate
9 and proper” standard Cal. Water Code § 13320(c). If the State Board finds that the action was
10 inappropriate or improper, the State Board has several options, including directing the Regional
11 Board to take appropriate action, referring the matter to another state agency with jurisdiction,
12 taking the appropriate action itself or taking any combination of the above actions. *Id.*
13 Consequently, the State Board is not bound by the decision of the Regional Board, but instead
14 “[t]he scope of review . . . appears to be closer to that of independent review.” Order No. WQ 85-
15 7 at 14. To uphold the Regional Board’s action, the State Board must conclude that it was “based
16 on substantial evidence.” *Id.*

17 **2. The CAO Is Not Based on Substantial Evidence**

18 The purported “findings” upon which the CAO is based cannot support it because those
19 “findings” themselves lack foundation.

20 The CAO asserts that two wetlands of 0.978 and 1.200 acres, respectively, were filled on
21 the property. CAO at 1. The “report” upon which this conclusion is based is factually flawed
22 and, as a result, the CAO’s findings do not accurately reflect the extent, if any, of wetlands on the
23 property.

24 This is just one of the many factual flaws in the CAO. The CAO lacks substantial
25 evidence and, accordingly, and should be rescinded.

26 **3. The CAO Is Not Authorized by Law**

27 For a number of reasons, the CAO is unauthorized.

28

1 As explained above, the Regional Board is charged with addressing the improper
2 discharge of “waste” to “waters of the State” without a permit. Cal. Water Code §§ 13260,
3 13263. “Waters of the state” is defined “any surface water or ground water, including saline
4 waters, within the boundaries of the state.” *Id.* § 13050(e). With respect to wetlands, the
5 Regional Board only considers wetlands meeting the Corps’ parameters of wetlands to be waters
6 of the state. The Corps identifies features as wetlands upon finding three characteristics present:
7 (1) hydrophytic vegetation; (2) hydric soils; and (3) wetlands hydrology. U.S. Army Corps of
8 Engineers, *Wetlands Delineation Manual* 9-10 (1987). The Regional Board may only address
9 issues that affect these features. As the CAO seeks to address features that are not “waters of the
10 state,” it is consistent with the law and must be rescinded.

11 Further, the CAO fails to satisfy the requirements of Water Code section 13267(b)(1),
12 which directs that the “burden, including costs, of [required] reports shall bear a reasonable
13 relationship to the need for the report and the benefits to be obtained from the reports.” Cal.
14 Water Code § 13267(b)(1). Here, The CAO requires extensive technical reports, workplans and
15 monitoring. CAO at 5-7. As to the first factor in section 13267(b), there is no legitimate need for
16 the reports. This work is duplicative and, at times, even inconsistent with, the measures Palmaz
17 has taken and will be taken. This would result in significant unnecessary costs to Palmaz. With
18 respect to the second factor in Water Code section 13267(b), any benefits to be obtained from the
19 reports are negligible and speculative. As discussed in detail above, Palmaz’s remediation work
20 on the property has already addressed the issues of concern in the CAO. As a result, there is no
21 legitimate need for the reports and programs required by the CAO and the Regional Board fails to
22 meet the legal requirements of section 13267.

23 These are just two of the numerous legal defects in the CAO. The CAO fails as a matter
24 of law and should be rescinded.

25 **4. There Is No Basis for Included the Property Under the Region’s**
26 **Spills, Leaks, Investigations and Cleanup (SLIC) Cost Recovery**
27 **Program**

28 The Cover Letter for the CAO imposes a requirement that Palmaz sign an
acknowledgement of receipt of the Spills, Leaks, Investigation and Cleanup (SLIC) Program

1 policy by April 6. Cover Letter at 1-2. There is no basis for including the property in the
2 SLIC program, nor for imposing this deadline.

3 Under the SLIC Program, the Regional Board addresses site investigation and
4 corrective action at sites not overseen by the boards' other programs. *See* State Board
5 Resolution No. 92-49. This program covers all types of pollutants (e.g. solvents, petroleum
6 fuels, and heavy metals) and all media (soil, surface water, and groundwater). The San
7 Francisco Region's program is designed to cleanup the impacts of current or historic
8 unauthorized discharges, primarily to groundwater, but in some cases also to surface waters or
9 sediments. The program issues cleanup orders that require investigations, source removals, set
10 final cleanup standards, treatment and monitoring.

11 The Palmaz Vineyard is not the type of property that is regulated under the SLIC
12 Program. Palmaz has already been conducting cleanup work at the site and is committed to
13 remedying the effects, if any, of any past conduct that may have affected water quality
14 conditions on the property. Accordingly, there is no need for Regional Board oversight and the
15 property's inclusion in the SLIC program is unwarranted.

16 Moreover, there is no statutory or other guidance for imposing a deadline on Palmaz to
17 confirm receipt of the SLIC policy. *See generally* State Board Resolution No. 92-49.
18 Moreover, the acknowledgement is not just that Palmaz received a copy of the program policy;
19 rather, it is an agreement to bring the site within the program. Although the acknowledgment
20 claims it is not an admission of liability, the enclosed program description explains that "[n]o
21 cleanup oversight will be performed unless the responsible party of the property acknowledges
22 that he/she agrees to reimburse the State for appropriate cleanup oversight costs. You may wish
23 to consult an attorney in this matter. As soon as the letter is received, the account will be
24 added to the active SLIC Cost Recovery billing list and oversight work will begin." CAO,
25 Attachment 3. This suggests that signing the acknowledgement starts the oversight and cleanup
26 process. As the site does not belong under the program, the demand that the confirmation be
27 signed and returned by a certain date is improper. Accordingly, the CAO is improper and
28 inappropriate and should be rescinded.

1 **5. The Imposition of the CAO Violates Palmaz's Constitutional**
2 **Rights**

3 **a. The Imposition of the CAO Singles Out Palmaz for**
4 **Selective Prosecution in Violation of its Right to Equal**
5 **Protection**

6 The CAO inappropriately singles out Palmaz for imposition of special burdens and
7 requirements. By the CAO, the Regional Board is intentionally singling out Palmaz and treating
8 it differently from other similarly situated property owners, even though there is no rational basis
9 for the difference in treatment. *See Village of Willowbrook v. Olech*, 528 U.S. 562, 564 (2000).
10 In light of these circumstances, the imposition of the CAO is, on its face, irrational and arbitrary.

11 **b. The Imposition of the CAO Would Result In A**
12 **Regulatory Taking Of Palmaz's Property**

13 As previously noted, the CAO does not take into account economic or operational
14 feasibility. As a result, the burdens it imposes make Palmaz's property uneconomical. This
15 results in a taking of those lands. *See Agins v. City of Tiburon*, 447 U.S. 255, 260 (1980); *Nollan*
16 *v. Cal. Coastal Comm'n*, 483 U.S. 825, 834 (1987); *Dolan v. City of Tigard*, 512 U.S. 374, 383-
17 84 (1994). The CAO is, on its face, improper and should be rescinded.

18 **c. The Imposition of the CAO Would Violate Palmaz's**
19 **Right To Substantive Due Process**

20 "Substantive due process prevents governmental power from being used for purposes of
21 oppression, or abuse of government power that shocks the conscience, or action that is legally
22 irrational in that it is not sufficiently keyed to any legitimate State interest." *Clark v. City of*
23 *Hermosa Beach*, 48 Cal. App. 4th 1152, 1185 (1996); *see also Dodd v. Hood River County*, 59
24 F.3d 852, 864 (9th Cir. 1995) ("A substantive due process claim requires proof that the
25 interference of property rights was irrational and arbitrary."). Because there is no factual basis or
26 legal authority for imposition of the CAO, it would necessarily be irrational and arbitrary, having
27 no connection to a legitimate public purpose. Accordingly, the CAO violates Palmaz's
28 substantive due process rights and should be rescinded.²

² Palmaz's rights to procedural due process are likewise violated by the Regional Board
issuing the CAO without hearing or notice. Because Palmaz was already engaged in remedying
issues at the property, this is not a situation where a threatened or continuing water quality
problem made a summary procedure, such as issuing an order without any prior notice or hearing,

1 **VIII. LIST OF INTERESTED PARTIES**

2 Palmaz has contacted the Regional Board for information on other interested parties. As
3 of the time of filing this petition, Palmaz has not received a response, but will amend this Petition
4 when this information becomes available.

5 **IX. STATEMENT THAT COPIES OF THIS PETITION HAVE BEEN SENT TO**
6 **THE REGIONAL BOARD**

7 Copies of this petition have been served on the San Francisco Bay Regional Water Quality
8 Control Board. Please also see the Proof of Service attached hereto.

9 **X. REQUEST FOR PREPARATION OF THE ADMINISTRATIVE RECORD.**

10 A true and correct copy of Palmaz's request to the Regional Board for preparation of the
11 administrative record is attached hereto as Exhibit B.

12 **XI. REQUEST FOR HEARING**

13 Palmaz requests that the State Board hold a hearing in this matter.

14 **XII. STATEMENT OF ADDITIONAL EVIDENCE**

15 Palmaz reserves the right to present at the hearing on its Petition additional evidence that
16 includes, but is not limited to, the following:

- 17 • The improving conditions in Hagen Creek.
- 18 • Legacy conditions, natural conditions, and conditions associated with the Palmaz
19 winery and vineyards.
- 20 • Rebuttal evidence to the statements made in the March 21, 2007 CAO.
- 21 • Economic harm to Palmaz as a result of the CAO and the delay or prohibition on
22 construction.
- 23 • Wetlands delineation on the property.

24 This evidence is in addition to that cited and referenced in this Petition. There was no
25 hearing before the Regional Board on whether the CAO that is the subject to his Petition should
26 issue.

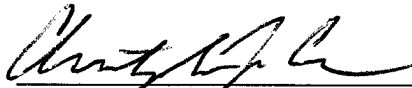
27 appropriate. *See, e.g.,* State Water Resources Control Board Order No. WQ 85-10 at 5 (observing
28 CAO process was designed so that a "Regional Board Executive Officer could act expeditiously
to correct water quality problems").

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Respectfully Submitted,

Dated: April 20, 2007

EDGAR B. WASHBURN
CHRISTOPHER J. CARR
SHAYE DIVELEY
MORRISON & FOERSTER LLP

By: 
Christopher J. Carr

Attorneys for Petitioners JULIO
CESAR PALMAZ and AMALIA B.
PALMAZ, TRUSTEE OF THE
AMALIA B. PALMAZ LIVING
TRUST

Exhibit A

Exhibit A



California Regional Water Quality Control Board

San Francisco Bay Region



Linda S. Adams
Secretary for
Environmental Protection

1515 Clay Street, Suite 1400, Oakland, California 94612
(510) 622-2300 • Fax (510) 622-2460
<http://www.waterboards.ca.gov/sanfranciscobay>

Arnold Schwarzenegger
Governor

CERTIFIED MAIL

Return Receipt No. 7004 2890 0004 0045 0690

Date: **MAR 21 2007**
File No. 2139.3137(STL)

Mr. Julio Cesar Palmaz and
Mrs. Amalia B. Palmaz,
Trustee of the Amalia B. Palmaz Living Trust
4031 Hagen Road
Napa, California 94558

Subject: CLEANUP AND ABATEMENT ORDER R2-2007-0019, PALMAZ VINEYARD
AND WINERY, NAPA COUNTY

Dear Mr. and Mrs. Palmaz:

Enclosed with this letter is Cleanup and Abatement Order No. R2-2007-0019 (Order) for illicit discharges of excavated cave spoils at the Palmaz Vineyard and Winery development site located in Napa County.

As specified in Finding No. 15 and Provision No. 7 of the Order, the Water Board is entitled to recover reasonable costs actually incurred by staff from responsible parties to oversee cleanup of unauthorized discharges that have adversely impacted or threaten to affect waters of the State. To assure that sufficient Water Board staff resources are available to conduct the necessary reviews and approvals, we intend to include this site in this Region's Spills, Leaks, Investigations and Cleanup (SLIC) Cost Recovery Program, more fully described in the attached Reimbursement Process for Regulatory Oversight enclosure.

Estimate of Work to be Performed and Expected Outcome

Water Board staff will be actively overseeing the investigation and cleanup of this site. Given this, Water Board staff estimate that the following work will be performed for the subject site during fiscal year 2006 – 2007, ending June 30, 2007: 1) Review work plans; investigation reports; remediation plans; and associated correspondence from the discharger, its consultant and/or interested parties; 2) Conduct site inspections following up on the technical reports and conduct duplicate samplings if necessary; 3) Conduct meetings regarding the site on issues relevant to site cleanup and remediation; and 4) Discuss issues related to the site and prepare written correspondence between the Water Board and interested parties.

Preserving, enhancing, and restoring the San Francisco Bay Area's waters for over 50 years

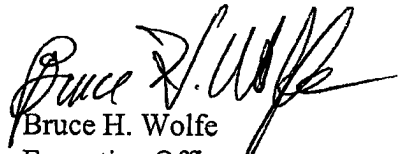
Billing Rates

Attachment 1 provides a detailed description of the billing procedure. Attachment 2 lists the billing rates for employees expected to engage in the work or services for your site/facility. We estimate that 75 hours will be required in the oversight of the subject site for the remainder of the State's fiscal year, which ends June 30, 2007. This is merely an estimate. The actual time needed will depend on the nature and extent of the necessary oversight. The name and classification of employees making charges will be listed on invoices. The average billing rate is approximately \$110 per hour. An estimate for any necessary work after June 30, 2007, will be provided in late spring following the review of the technical report and Corrective Action Workplan submittals required by the Order, and the progress made toward remediation of the Site.

You are required to acknowledge in writing your intent to reimburse the State for cleanup oversight work as described in this letter and Attachment 1, by returning Attachment 3, or its equivalent, to the Water Board by April 6, 2007.

If you have any questions concerning this letter, please contact Selina T. Louie of my staff at (510) 622-2383, [e-mail slouie@waterboards.ca.gov].

Sincerely,


Bruce H. Wolfe
Executive Officer

Enclosures: Cleanup and Abatement Order No. R2-2007-0019
Attachment 1 - Reimbursement Process for Regulatory Oversight
Attachment 2 - Billing Rates
Attachment 3 - Acknowledgment Letter

cc: Christopher Carr, Morrison Foerster
Robert Peterson, Department of Public Works, Napa County
Lieutenant Don Richardson, Department of Fish and Game
Daryl Roberts, Consumer/Environmental Protection Division, Napa County DA Office

STATE OF CALIFORNIA
CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN FRANCISCO BAY REGION

CLEANUP AND ABATEMENT ORDER NO. R2-2007-0019
JULIO CESAR PALMAZ AND AMALIA B. PALMAZ, TRUSTEE OF THE AMALIA B.
PALMAZ LIVING TRUST
NAPA COUNTY

The California Regional Water Quality Control Board, San Francisco Bay Region (hereinafter the Water Board), finds that:

1. The Amalia B. Palmaz Living Trust (Trust) owns approximately 540 acres of land (Napa County parcels with Assessor's Parcel Number (APN): 033-110-056-000, 033-110-058-000, 033-110-072-000, 033-110-062-000, 049-270-019-000, and 049-270-020-000) in unincorporated Napa County, east of the City of Napa, in the vicinity of Hagen Road and Monticello Road (Site). Julio Cesar Palmaz and Amalia B. Palmaz, as trustee of the Trust, are hereinafter collectively referred to as the Discharger.
2. The Site was originally an abandoned vineyard and a winery, but the majority of the land was undeveloped. The Discharger applied to Napa County for a use permit to develop a winery at the Site. The project proposal included plans for excavation and development of a cave associated with winery operations at the Site. The County issued a conditional use permit authorizing the winery at the Site to the Discharger on June 20, 2001.
3. The Discharger initiated construction activities at the Site, including excavation of the cave, deposition of the excavated material (cave spoils) on the Site, and grading of Site roads without proper authorizations and permits from the Water Board and the California Department of Fish and Game (CDFG). In an interview with CDFG staff on May 25, 2006, Amalia Palmaz stated that the placement of cave spoils at the Site began in early 2002. Cave spoils remain where they were deposited, and, to the extent they were deposited in waters of the State, they constitute an ongoing discharge of waste.
4. The Discharger discharged and deposited cave spoils at various locations around the Site, including in waters of the State. Specifically, the Discharger discharged and deposited spoils into approximately two acres of wetlands and culverted and filled one or more drainages tributary to Hagen Creek and to the Napa River. The spoils and other fill material are a waste under California Water Code (CWC) Section 13050(d). The filled and culverted wetlands and drainages at the Site constitute waters of the State.
5. The discharge of cave spoils into waters of the State and the culverting of drainages is susceptible to cleanup and remediation. To date, the Discharger has not undertaken any voluntary cleanup efforts.
6. The filled wetlands are identified as Wetlands C and D in a wetland delineation by the former property owner, entitled *Revised Draft Wild Horse Valley Ranch Biological Resource Survey* dated September 23, 1992 (Survey). The Survey shows Wetland C to be 0.978 acres and Wetland D to be 1.200 acres. Wetland C has now been filled with cave spoils and one or

more culverts. Wetland D has also been filled with cave spoils and a vineyard has been planted on top of the unauthorized fill material. These wetland areas have been identified in different reports and correspondence as the Upper Vineyard or the 1400 Vineyard Block. The botanist, Jake Ruygt, who conducted the Survey, visited the Site on November 20, 2006, and sent a letter to the CDFG, dated November 29, 2006, in which he confirmed that he surveyed the 1400 Vineyard Block as part of the Survey and delineated Wetland C and Wetland D in the 1400 Vineyard Block. In his letter to CDFG, Mr. Ruygt indicated that Wetland C and Wetland D were botanically very rich.

7. The San Francisco Bay Basin Water Quality Control Plan (Basin Plan) defines the existing and potential beneficial uses for waters within the region. The beneficial uses of any specifically identified water body generally apply to all its tributaries. The Basin Plan designates the following existing and potential beneficial uses for the Napa River: agricultural supply, cold freshwater habitat, fish migration, municipal and domestic supply, navigation, preservation of rare and endangered species, contact and noncontact water recreation, fish spawning, warm freshwater habitat, and wildlife habitat. Additionally, under the CWC, beneficial uses that have yet to be designated in the Basin Plan must be protected. Here, Wetlands C and D and other waters of the State at the Site likely supported the following beneficial uses: preservation of rare and endangered species, and wildlife habitat.
8. The Basin Plan further requires the protection of wetlands due to their critical value as: habitat for fish, birds, and other wildlife; open space; places for recreational opportunities; and a means to control floods and erosion, stabilize stream banks, and filter naturally occurring contaminants. Specifically, the Basin Plan incorporates federal regulations to require dischargers to avoid wetland filling, or when avoidance is impossible, to minimize wetland disturbance and to mitigate for any lost wetland acreage and values through wetland restoration or creation.
9. The Discharger's filling of wetlands and other waters of the State at the Site has eliminated and thereby unreasonably affected the beneficial uses associated with these waters of the State (CWC Section 13050(1)). Here, the Discharger filled and culverted wetlands and drainages, thereby eliminating the beneficial uses of these waters of the State.
10. The Discharger failed to submit any report of waste discharge as required by CWC Section 13260 prior to discharging waste that could affect the quality of waters of the State. The Discharger also violated CWC Section 13264 by discharging waste without authorization.
11. The Discharger further failed to comply with permit requirements for the discharge of stormwater associated with construction activities in connection with its grading and other construction-related activities at the Site. For example, the Discharger did not have permit coverage or comply with permit requirements for grading activities associated with the Palmaz Access Road during the period April 1, 2005 to January 12, 2006.
12. In 2006, a Napa County inspector told Water Board staff that he observed that the Discharger did not implement effective erosion and sediment control best management practices (BMPs) during grading of roads, vegetation removal, and channel bank grading. Inadequate

construction and post-construction BMPs can result in exposed soils and fill materials becoming mobilized, and cause a discharge of sediment to downstream waters, which in this case are impaired by sediment.

13. Based on the above findings, the Water Board finds that the Discharger has caused or permitted waste to be discharged or deposited where it has been discharged into waters of the State, and created or threatens to continue to create a condition of pollution. As such, pursuant to CWC Sections 13267 and 13304, this Order requires the Discharger to submit technical reports to enable the Water Board to understand the extent, scope, and character of the discharge and its impacts, and requires the Discharger to undertake corrective action to cleanup the waste it discharged and abate its effects.
14. This Order is an action to enforce the CWC and, as such, is exempt from the California Environmental Quality Act, pursuant to Section 15321(a)(2) of Title 14, California Code of Regulations.
15. Pursuant to Section 13304 of the CWC, the Discharger is hereby notified that the Water Board is entitled to, and may seek reimbursement for, all reasonable costs actually incurred by the Water Board to investigate unauthorized discharge of waste and to oversee cleanup of such waste, abatement of the effect thereof, or other remedial action, required by this Order.

IT IS HEREBY ORDERED, pursuant to Sections 13267 and 13304, of Division 7 of the California Water Code, that the Discharger shall submit the required technical reports and clean up the waste discharges, abate its effects, and take other remedial actions as follows:

A. Prohibitions

1. No debris, soil, silt, sand, cement, concrete, or washings thereof, or other construction related materials or wastes, oil or petroleum products or other organic or earthen material, including cave spoils, shall be allowed to enter into or be placed where it may be washed by rainfall or runoff into waters of the State.
2. The discharge of fill, waste, or hazardous materials that will degrade, or threaten to degrade, water quality or adversely affect, or threaten to affect beneficial uses of the waters is prohibited. The Basin Plan prohibits the discharge of "silt, sand, clay, or other earthen materials from any activity in quantities sufficient to cause deleterious bottom deposits, turbidity or discoloration in surface waters or to unreasonably affect or threaten to affect beneficial uses."
3. The discharge of sediments resulting from inadequate erosion and sediment control measures is prohibited.
4. Removal of riparian vegetation that impacts water quality in any creek, tributary, or other water of the State is prohibited.

B. Provisions

1. No later than May 1, 2007, the Discharger shall submit the following:

- a. A technical report containing a characterization of the nature and extent of any grading, excavation, filling, culverting, or other construction-related activities performed at the entire Site. The "entire Site" shall not be limited to the APN numbers noted in Finding 1, but include the entire site owned by the Trust in and in the vicinity of Palmaz Vineyards in unincorporated Napa County, and all areas where cave spoils were deposited, culverts have been installed, maintained, or replaced, and where grading activities, including road construction, have taken place. This characterization is required for all such activities that have occurred since the time the Site was acquired by the Discharger, and shall include, but not be limited to, the following: defining the entire Site using Napa County APN; topographic maps, grading plans and grading permits; as-built engineering plans; identification of professionally certified individuals or firms involved in the design and construction of grading and filling activities at the Site; aerial photographs as necessary; and any existing engineering and geotechnical test results and analyses corresponding to: Site conditions, areas where fill materials have been placed, and where culverts, check dams, spring boxes and any other water control structures have been constructed at the Site. This report shall also contain maps illustrating at suitable scales the extent of any grading, excavation, culverting, filling, or other construction-related activities, land or water feature disturbances, and all changes to the Site drainage patterns and topography.
- b. A technical report containing a characterization of the Site conditions *prior* to the grading and filling activities associated with development of the winery and vineyard, which includes, but is not limited to, the following: Site geologic conditions; a pre-project hydrologic analysis of any areas which have undergone grading, excavation, culverting, or filling; descriptions of the conditions of all areas containing wetland habitat, surface water drainage features, springs or other waters of the State at the Site, as they existed prior to any grading, excavation, culverting, filling, or other construction-related activities, and land or water feature disturbances at the Site. This Site characterization report should include photo-documentation, including aerial photographs, technical reports, topographic maps or drawings as necessary to illustrate the conditions of the Site prior to the grading, excavation, culverting, filling, or other construction-related activities.
- c. A technical report containing a characterization of the present Site conditions which includes, but is not limited to, descriptions of any impacts to wetland areas, surface water drainages, springs or other waters of the State at the Site, associated with grading, excavation, culverting, filling, or other construction-related activities.

- d. Description of any permits, and other authorizations obtained from local, State, federal agencies, and local or regional districts for any grading, excavation, culverting, filling, or other construction-related activities that have taken place at the Site since it was acquired by the Discharger.

2. No Later than May 1, 2007, Submit a Corrective Action Workplan that includes the following:

- a. A workplan proposal for corrective actions to reconstruct, revegetate, restore and remediate the acreage, values, functions, and beneficial uses of the wetlands and other waters of the State that have been impacted at the Site by grading, excavation, culverting, filling, other construction-related activities, and land or water feature disturbances. This Corrective Action Workplan shall include success criteria and performance standards for assessing whether the corrective actions are achieving intended habitat restoration goals, including identification and justification for targeted native plant species, reference sites, targeted soil and hydrologic conditions, and a corrective action self-monitoring program. Performance standards shall designate the final habitat success criteria, as well as annual criteria. The Corrective Action Workplan shall include an implementation time schedule acceptable to the Water Board Executive Officer.
- b. No later than July 1 of each year from initiation of the corrective actions until the corrective actions are successfully achieved, the Discharger shall submit annual self-monitoring reports evaluating the success of the corrective action restoration activities. The corrective action self-monitoring program shall monitor the success of the corrective actions until the approved habitat restoration activities have been successfully achieved, but not for less than a period of five years following completion of the corrective actions, and not for less than a period of two years after any irrigation of revegetation plantings has ceased.
- c. A workplan proposal to provide compensatory habitat to mitigate the temporal impacts associated with the loss of acreage, values, and functions of impacted waters of the State and corresponding beneficial uses. "Temporal impacts" refers to any direct and indirect adverse impacts to waters of the State and corresponding beneficial uses during the time period between the initial disturbance of any waters or wetlands and the successful re-establishment of the acreage, values, functions of any impacted water features. This mitigation habitat workplan proposal shall include success criteria and performance standards for assessing whether the corrective actions are achieving intended habitat restoration goals, including identification and justification for targeted native plant species, targeted soil and hydrologic conditions, and a mitigation habitat self-monitoring program. This workplan shall also include an

implementation time schedule acceptable to the Water Board Executive Officer.

- d. No later than July 1 of each year from initiation of the temporal impact mitigation activities until the mitigation habitat is successfully achieved, the Discharger shall submit annual self-monitoring reports evaluating the success of the temporal impact mitigation activities. This self-monitoring program shall monitor the progress in achieving the final success criteria until the approved habitat mitigation activities have been successfully achieved, but not for less than a period of five years following completion of installation, and not for less than a period of two years after any irrigation of revegetation plantings has ceased.
- e. Within sixty days of approval of the Corrective Action Workplan by the Water Board Executive Officer, the Discharger shall initiate implementation of the Corrective Action Plan in accordance with the approved implementation time schedule.

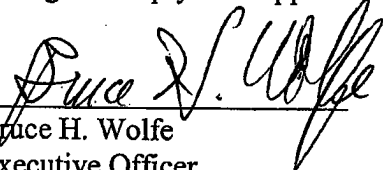
3. Notice of Completion

The Discharger shall submit with the final self-monitoring report, a Notice of Completion acceptable to the Water Board Executive Officer that the Corrective Action Workplan as approved has been successfully completed.

- 4. Water Board staff shall be permitted reasonable access to the Site as necessary to oversee compliance with this Order.
- 5. The technical reports and Corrective Action Workplan required under Provision Nos. 1 and 2 above shall be true, correct, adequate and complete, as determined by the Water Board Executive Officer.
- 6. If the Discharger is delayed, interrupted or prevented from meeting work completion and report submittal dates specified in the Order, the Discharger shall promptly notify the Water Board Executive Officer in writing with recommended revised completion or report submittal dates. Any extensions of the time deadlines specified in this Order must be approved in writing by Water Board staff. The Water Board Executive Officer may consider revisions to this Order.
- 7. As described in Finding 15 above, upon receipt of a billing statement for costs incurred pursuant to CWC Section 13304, the Discharger shall reimburse the Board.

Pursuant to California Water Code Sections 13304 and 13350, if the Discharger fails to comply with the provisions of this Order, the Board may impose civil liabilities up to \$5,000 per day of violation of this Order, and to consider requesting the Attorney General to take appropriate enforcement action against the Discharger, including injunctive and judicial civil liabilities. Failure to furnish technical reports or falsifying information therein is a misdemeanor and may

subject the Discharger to additional civil liabilities. This Order does not preclude or otherwise limit in any way the Board's ability to take appropriate enforcement action for the Discharger's violations of applicable laws, including, but not limited to, discharging without a permit and failing to comply with applicable stormwater control requirements.



Bruce H. Wolfe
Executive Officer

MAR 21 2007

Date

REIMBURSEMENT PROCESS FOR REGULATORY OVERSIGHT

We have identified your facility or property as requiring regulatory cleanup oversight. Pursuant to the Porter-Cologne Water Quality Control Act, reasonable costs for such oversight can be recovered by the Regional Water Quality Control Board (RWQCB) from the responsible party. The purpose of the enclosure is to explain the oversight billing process structure.

INTRODUCTION

The Porter-Cologne Water Quality Control Act authorizes the State Water Resources Control Board (SWRCB) to set up Cost Recovery Programs. The Budget Act of 1993 authorized the SWRCB to establish a Cost Recovery Program for Spills, Leaks, Investigations, and Cleanups (SLIC). The program is set up so that reasonable expenses incurred by the SWRCB and RWQCBs in overseeing cleanup of illegal discharges, contaminated properties, and other unregulated releases adversely impacting the State's waters can be reimbursed by the responsible party. Reasonable expenses will be billed to responsible parties and collected by the Fee Coordinator at the SWRCB in the Division of Clean Water Programs (DCWP).

THE BILLING SYSTEM

Each cost recovery account has a unique charge number assigned to it. Whenever any oversight work is done, the hours are billed to the account number on the employee's time sheet. The cost of the staff hours is calculated by the State Accounting System based on the employee's salary and benefit rate and the SWRCB overhead rate.

SWRCB and RWQCB Administrative charges for work such as accounting, billing preparation, general program meetings and program specific training cannot be charged directly to an account. This work will be charged to Administrative accounting codes. The Accounting Office totals these administrative charges for the billing period and distributes them back to all of the accounts based on the number of hours charged to each account during that billing period. These charges show as SWRCB Program Administrative Charges and RWQCB Program Administrative Charges on the Invoice.

The Overhead Charges are based on the number of labor hours charged to the account. The overhead charges consist of rent, utilities, travel, supplies, training, and personnel services. If there is no labor charged to the account during the billing period, there will be no overhead charges for that billing period with the exception of the last month of each fiscal year. This is due to the fact that the labor charges end June 30 for the current fiscal year. However, several kinds of overhead charges such as supply orders and travel expenses are paid after the fiscal year ends. The SWRCB Accounting Office keeps track of these charges and distributes them back to all of the accounts based on the number of hours charged to each account for the whole fiscal year that has just ended. Therefore, the quarterly statements for the last month of the fiscal year could show no labor hours charged for the billing period, but some overhead charges could be charged to the account.

Invoices are issued quarterly, one quarter in arrears. If a balance is owed, a check is to be remitted to the SWRCB with the invoice remittance stub within 30 days after receipt of the invoice. The Accounting Office sends a report of payments to the Fee Coordinator on a quarterly basis.

Copies of the invoices are sent to the appropriate RWQCBs so that they are aware of the oversight work invoiced. Questions regarding the work performed should be directed toward your RWQCB project manager. If the responsible party becomes delinquent in their quarterly payments, oversight work will cease immediately. Work will not begin again unless the payments are brought up-to-date.

DAILY LOGS

A detailed description (daily log) of the actual work being done at each specific site is kept by each employee in the RWQCB who works on the cleanup oversight at the property. This information is provided on the quarterly invoice using standardized work activity codes to describe the work performed. *Upon request, a more detailed description of the work performed is available from the RWQCB staff.*

REMOVAL FROM THE BILLING SYSTEM

After the cleanup is complete, the RWQCB will submit a closure form to the SWRCB to close the account. If a balance is due, the Fee Coordinator will send a final billing for the balance owed. The responsible party should then submit a check to the SWRCB to close the account.

AGREEMENT

No cleanup oversight will be performed unless the responsible party of the property acknowledges that he/she agrees to reimburse the State for appropriate cleanup oversight costs. You may wish to consult an attorney in this matter. As soon as the letter is received, the account will be added to the active SLIC Cost Recovery billing list and oversight work will begin.

REGIONAL BOARD DISPUTE RESOLUTION

Based on the Regional Board's review and comment, the following section has been added as a San Francisco Bay Region (Region 2) attachment to the SLIC Cost Recovery Program's "Guide to the Billing Process" enclosure, "Reimbursement Process for Regulatory Oversight".

The Regional Board staff proposes to provide each responsible party (upon request) with daily logs of actual oversight work done and supporting accounting information for the responsible party's site. If, upon the receipt of the billing statement, the responsible party disputes the amount due, the responsible party may follow the dispute resolution procedure described below. If the responsible party follows the procedure, the Regional Board will not initiate, except as noted, enforcement action for failure to reimburse the Board. During this procedure, the responsible party is encouraged to confer with Regional Board staff at any time to discuss the areas in question and attempt to resolve the dispute.

1. The responsible party must notify the Regional Board in writing within 30 calendar days of receipt of the billing statement to indicate that it disputes the billing statement and requests a meeting with the Regional Board Assistant Executive Officer. This notification must indicate the specific areas of dispute and provide all appropriate support documentation. Upon completion of the meeting, the Assistant Executive Officer will provide a recommendation to the Regional Board Executive Officer on the dispute and recommend an amount due, based on documentation provided by both the responsible party and the Board staff at the meeting. The Executive Officer will submit a written decision and resultant amount due to the responsible party and specify the new due date by which the resultant amount due must be paid to avoid enforcement action. This due date will be not less than ten working days from the date of the Executive Officer's written decision.
2. If, upon receipt of the Executive Officer's written decision, the responsible party still disputes the amount due and so notifies the Executive Officer by the new due date, the Executive Officer will schedule an appeal hearing of the decision before the Regional Board at the next appropriate monthly meeting. The Executive Officer may also consider recommending that the Board take enforcement action for the responsible party's failure to pay the resultant amount due by the new due date if the Board

finds the responsible party's appeal without basis. Any amount due and not appealed to the Board will be considered a violation of the Board's order.

CALIFORNIA CODE OF REGULATIONS - DISPUTE RESOLUTION

If a dispute regarding oversight charges cannot be resolved with the Regional Board, Section 13320 of the California Water Code provides an appeal process to Regional Board decisions. Regulations implementing Water Code Section 13320 are found in Title 23 of the California Code of Regulations, Section 2050.

**SPILLS, LEAKS, INVESTIGATIONS, AND LEAKS (SLIC) PROGRAM
BILLING COST EXPLANATION**

Employee Salary and Benefits by Classification ¹	ABR	SALARY SCALE
Associate Governmental Program Analyst	AGPA	5,468 - 6,646
Engineering Geologist	EG	4,753 - 8,316
Environmental Scientist	ES	3,824 - 7,097
Office Assistant	OA	2,578 - 3,442
Office Technician	OT	3,338 - 4,056
Principal Water Resources Control Engineer	PWRCE	9,476 - 10,451
Sanitary Engineering Associate	SEA	6,165 - 7,491
Sanitary Engineering Technician	SET	4,245 - 5,922
Senior Engineering Geologist	SEG	7,650 - 9,297
Senior Environmental Scientist	SRES	6,774 - 9,823
Senior Water Resources Control Engineer	SWRCE	7,650 - 9,297
Staff Counsel	STCOUN	5,099 - 9,823
Staff Counsel III	STCOUNIII	9,185 - 11,334
Staff Counsel IV	STCOUNIV	10,141 - 12,522
Staff Environmental Scientist	SES	6,767 - 8,172
Student Assistant	SA	1,812 - 2,413
Student Assistant Engineer	SAE	2,488 - 3,723
Supervising Water Resources Control Engineer	SUWRCE	8,622 - 10,206
Water Resources Control Engineer	WRCE	4,753 - 8,298

Indirect Charges²

Indirect costs	100% of salaries and benefits
Accounting administrative costs	15% of salaries and benefits
Regional Board administrative costs	20% of salaries and benefits

Billing Example

Water Resources Control Engineer		
Salary:	\$	8,298
Overhead (indirect costs):	\$	8,298
Admin.: State Board	\$	1,245
Regional Board	\$	1,660
Total Cost per month	\$	19,501

Divided by 176 hours per month equals per hour: \$ 110.80

(Due to the various classifications that expend SLIC resources. An average of \$ 110.00 per hour can be used for projection purposes.)

¹ The name and classification of employees performing oversight work will be listed on the invoice you receive.

² The examples are estimates based on recent billings. Actual charges may be slightly higher or lower.

**ACKNOWLEDGMENT OF RECEIPT OF
OVERSIGHT COST REIMBURSEMENT ACCOUNT LETTER**

I, _____, acting within the authority vested in me as an authorized representative of _____, a corporation, acknowledge that I have received and read a copy of the attached *REIMBURSEMENT PROCESS FOR REGULATORY OVERSIGHT* and the cover letter dated _____ concerning cost reimbursement for Water Board staff costs involved with oversight of cleanup and abatement efforts at **Palmaz Vineyard and Winery**. The address for this site is 4031 Hagen Road, Napa, Napa County. Palmaz Vineyard and Winery's Napa County Assessor's Parcel Numbers are 033-110-056-000, 033-110-058-000, 033-110-072-000, 033-110-062-000, 049-270-019-000, and 049-270-020-000.

I understand the reimbursement process and billing procedures as explained in the letter. Our company is willing to participate in the cost recovery program and pay all subsequent billings in accordance with the terms in your letter and its attachments, *and to the extent required by law*. I also understand that signing this form does not constitute any admission of liability, but rather only an intent to pay for costs associated with oversight, *as set forth above, and to the extent required by law*. Billings for payment of oversight costs should be mailed to the following individual and address:

BILLING CONTACT _____

BILLING ADDRESS _____

TELEPHONE NO. _____

RESPONSIBLE PARTY'S SIGNATURE _____

(Signature)

(Title)

DATE: _____

Staff: STL

Exhibit B

Exhibit B

1 EDGAR B. WASHBURN (#34038)
Email: EWashburn@mofo.com
2 CHRISTOPHER J. CARR (#184076)
Email: CCarr@mofo.com
3 SHAYE DIVELEY (#215602)
Email: SDiveley@mofo.com
4 MORRISON & FOERSTER LLP
425 Market Street
5 San Francisco, California 94105-2482
Telephone: 415.268.7000
6 Facsimile: 415.268.7522

7 Attorneys for Petitioners
JULIO CESAR PALMAZ and AMALIA B. PALMAZ,
8 TRUSTEE OF THE AMALIA B. PALMAZ LIVING TRUST

9
10 BEFORE THE
11 STATE WATER RESOURCES CONTROL BOARD

12 IN THE MATTER OF THE PETITION OF

SWRCB OCC File No.

13 JULIO CESAR PALMAZ and AMALIA B.
14 PALMAZ, TRUSTEE OF THE AMALIA B.
PALMAZ LIVING TRUST FOR REVIEW OF
15 CLEANUP AND ABATEMENT ORDER
(No. R2-2007-0019

**REQUEST FOR PREPARATION
OF ADMINISTRATIVE RECORD**

16 California Regional Water Quality Control Board,
17 San Francisco Bay Region

18
19 TO THE SAN FRANCISCO BAY REGIONAL WATER QUALITY CONTROL BOARD:

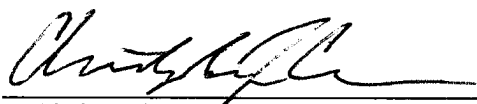
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21 Petitioners JULIO CESAR PALMAZ and AMALIA B. PALMAZ, TRUSTEE OF THE
22 AMALIA B. PALMAZ LIVING TRUST (collectively "Palmaz") hereby request that the San
23 Francisco Bay Regional Water Quality Control Board ("Regional Board") prepare and send the
24 administrative record for the Cleanup and Abatement Order No. R2-2007-0019 ("CAO"), dated
25 March 21, 2007. Palmaz is petitioning the State Board for review of the CAO.

26 The administrative record should include full and complete copies of all correspondence,
27 memoranda, and records of communication pertaining to the Regional Board's issuance of its
28 March 21, 2007 CAO and/or any drafts of the CAO. This should include the full administrative

1 record associated with the Regional Board's meetings and hearings relating to or discussing the
2 Palmaz Vineyard and Winery development site located in Napa County, including full and
3 complete copies of all reports, correspondence, memoranda, records of communication, hearing
4 transcripts, testimony, documents, exhibits and other material submitted by the Regional Board
5 staff, the County of Napa, the California Department of Fish and Game, Palmaz and/or the public.
6 These materials are relevant and material to the grounds for Palmaz's Petition.

7
8 Dated: April 20, 2007

CHRISTOPHER J. CARR
MORRISON & FOERSTER LLP

9
10 By: 
11 Christopher J. Carr

12 Attorneys for Petitioners JULIO
13 CESAR PALMAZ and AMALIA B.
14 PALMAZ, TRUSTEE OF THE
15 AMALIA B. PALMAZ LIVING
16 TRUST
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CERTIFICATE OF SERVICE

I declare that I am employed with the law firm of Morrison & Foerster LLP, whose address is 425 Market Street, San Francisco, California 94105-2482. I am not a party to the within cause, and I am over the age of eighteen years.

I further declare that on April 20, 2007, I served a copy of:

PETITION FOR REVIEW AND REQUEST FOR HEARING

☒ **BY U.S. MAIL** by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, addressed as follows, for collection and mailing at Morrison & Foerster LLP, 425 Market Street, San Francisco, California 94105-2482 in accordance with Morrison & Foerster LLP's ordinary business practices. I am readily familiar with Morrison & Foerster LLP's practice for collection and processing of correspondence for mailing with the United States Postal Service, and know that in the ordinary course of Morrison & Foerster LLP's business practice the document(s) described above will be deposited with the United States Postal Service on the same date that it (they) is (are) placed at Morrison & Foerster LLP with postage thereon fully prepaid for collection and mailing.

☐ **BY FACSIMILE** by sending a true copy from Morrison & Foerster LLP's facsimile transmission telephone number 415.268.7522 to the fax number(s) set forth below, or as stated on the attached service list. The transmission was reported as complete and without error. The transmission report was properly issued by the transmitting facsimile machine. I am readily familiar with Morrison & Foerster LLP's practice for sending facsimile transmissions, and know that in the ordinary course of Morrison & Foerster LLP's business practice the document(s) described above will be transmitted by facsimile on the same date that it (they) is (are) placed at Morrison & Foerster LLP for transmission.

☐ **BY OVERNIGHT DELIVERY** by placing a true copy thereof enclosed in a sealed envelope with delivery fees provided for, addressed as follows, for collection by UPS, at 425 Market Street, San Francisco, California 94105-2482 in accordance with Morrison & Foerster LLP's ordinary business practices. I am readily familiar with Morrison & Foerster LLP's practice for collection and processing of correspondence for overnight delivery and know that in the ordinary course of Morrison & Foerster LLP's business practice the document(s) described above will be deposited in a box or other facility regularly maintained by UPS or delivered to an authorized courier or driver authorized by UPS to receive documents on the same date that it (they) is (are) placed at Morrison & Foerster LLP for collection.

☒ **BY ELECTRONIC SERVICE** by electronically mailing a true and correct copy through Morrison & Foerster LLP's electronic mail system to the e-mail address(s) set forth below, or as stated on the attached service list per agreement.

SERVICE LIST

19 STATE WATER RESOURCES CONTROL BOARD ☒ Email
20 Office of Chief Counsel ☐ Fax
21 Attention Dolores White, Staff Services Analyst ☒ U.S. Mail
22 P.O. Box 100 ☐ Overnight
23 Sacramento, CA 95812-0100 ☐ Personal
24 Fax: (916) 341-5199
25 Email: dwhite@waterboards.ca.gov

23 Bruce H. Wolfe, Executive Officer ☐ Email
24 Selina Louie ☐ Fax
25 SAN FRANCISCO BAY REGIONAL WATER ☒ U.S. Mail
26 QUALITY CONTROL BOARD ☐ Overnight
27 1515 Clay Street, Suite 1400 ☐ Personal
28 Oakland, CA 94612
Phone: (510) 622-2300
Fax: (510) 622-2460

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Robert J. Peterson
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Napa County Administration Building
1195 Third Street, Room 201
Napa, CA 94559
Tel: (707) 253-4351

☐ Email
☐ Fax
☒ U.S. Mail
☐ Overnight
☐ Personal

Daryl A. Roberts, Head Deputy D.A.
CONSUMER/ENVIRONMENTAL PROTECTION
DIVISION
Napa County District Attorney Office
931 Parkway Mall
Napa, CA 94559
Tel: (707) 253-4059

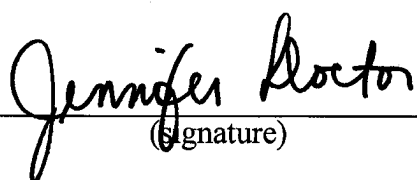
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Lieutenant Don Richardson
DEPARTMENT OF FISH AND GAME
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Yountville, CA 94599
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Fax: (707) 944-5563
drichardson@dfg.ca.gov

☐ Email
☐ Fax
☒ U.S. Mail
☐ Overnight
☐ Personal

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this document was executed at San Francisco, California on April 20, 2007.

Jennifer Doctor
(typed)


(signature)